

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RAYMOND K. HEDGESPETH, JR.,
BEN F. OLDAKOWSKI, DELBERT CLEVELAND,
BRYAN CAMPBELL and BRANDEN SUSTMAN, et al.,

Plaintiffs,

v.

THE STATE OF WISCONSIN,
DEPARTMENT OF HEALTH SERVICES and
ALL EMPLOYEES CONNECTED TO THE
COMMITMENT OF CHAPTER 980 AND ALL
THE PATIENTS SO CONFINED,

Defendants.

ORDER

13-cv-167-bbc

On April 8, 2013, I assessed initial partial payments for each of the plaintiffs in this case for their share of the \$350 filing fee. Now, plaintiff Raymond Hedgespeth has filed a motion for reconsideration of the order, *see* dkt. 10. Hedgespeth has also paid his \$21.55 initial partial payment of the \$350 filing fee.

In his motion for reconsideration, Hedgespeth says that it was his intention to proceed with this action as a class action and to pay the filing fee on his own. I understand Hedgespeth to be asking the court to rescind the assessments of the initial partial payments of plaintiffs Ben Oldakowski, Delbert Cleveland, Bryan Campbell and Branden Sustman. With respect to his intention to proceed with this action as a class action, Hedgespeth is advised that although he is free to file a request to certify this case as a class action if he wishes, there are several procedural hurdles that would have to be cleared, the most pressing of which would be the issue of representation by an attorney. A class action cannot proceed *pro se*. *See* Fed. R. Civ. P. 23(g). Before the court would consider assisting Hedgespeth in recruiting an attorney or a law firm as class counsel in a *pro se* case, Hedgespeth, like any other indigent *pro se* plaintiff, would have

to demonstrate that he already had made sufficient attempts to retain an attorney for the class but had been unsuccessful in doing so.

Given that Hedgespeth and the other plaintiffs may not have been aware of the requirement that the plaintiff(s) in a class action case must be represented by an attorney, I will provide the other currently named plaintiffs with two options: (1) to proceed as a group action with the five named plaintiffs, in which they all pay the initial payments assessed in the previous order, or (2) proceed as a proposed class action, with only Hedgespeth as plaintiff and only Hedgespeth paying an initial partial filing fee, with the knowledge that the case might not be certified for class treatment based on the allegations, claims and his lack of attorney. I will postpone a decision on Hedgespeth's motion for reconsideration until after plaintiffs respond to this order.

ORDER

IT IS ORDERED that plaintiffs Ben Oldakowski, Delbert Cleveland, Bryan Campbell and Branden Sustman may have until May 28, 2013 in which to notify the court whether they wish to prosecute this action jointly with Raymond Hedgespeth and to pay their initial partial payments in this case or, in the alternative, to notify the court that they wish to proceed as a proposed class action, with the knowledge that the case might not be certified for class treatment based on the allegations, claims or lack of attorney. If by May 28, any plaintiff fails to respond to this order as directed, he will be considered to have withdrawn from the lawsuit.

Entered this 7th day of May, 2013.

BY THE COURT:

PETER OPPENEER
Magistrate Judge